

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHARLIE M. CABRERA,

Petitioner,

vs.

DWIGHT NEVEN, et al.,

Respondents.

Case No. 2:14-cv-02162-JCM-GWF

ORDER

The court ordered petitioner to file an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on the court's form, and the court ordered petitioner to show cause why the action should not be dismissed as untimely. Order (#7). Petitioner has filed an amended petition (#9), and in the first pages of that petition he argues why the court should not dismiss the action.

Petitioner appears to have two arguments. First, he argues that if the court applies the statute of limitations, 28 U.S.C. § 2244(d)(1), it would be an unconstitutional renunciation of its authority. The court construes this as an argument that § 2244(d)(1) violates the suspension clause, Article I, section 9, clause 2, of the Constitution of the United States. The court of appeals already has held that § 2244(d)(1) does not violate the suspension clause. Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003); Green v. White, 223 F.3d 1001, 1003 (9th Cir. 2000). Second, petitioner appears to argue that his double-jeopardy claim raises a jurisdictional issue that the statute of limitations does not affect. The language of the statute of limitations, 28 U.S.C. § 2244(d), contains no such exceptions for the question of jurisdiction, and no court has determined that such exceptions exist. Cf. Barreto-Barreto v. United States, 551 F.3d 95, 100 (1st Cir. 2008) (holding that no exception for

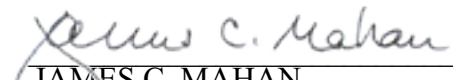
1 jurisdictional challenges exists for equivalent period of limitations of motion attacking a federal
2 sentence pursuant to 28 U.S.C. § 2255). Neither argument persuades the court, and the court will
3 dismiss this action.

4 Reasonable jurists would not find the court's conclusion to be debatable or wrong, and the
5 court will not issue a certificate of appealability.

6 IT IS THEREFORE ORDERED that this action is **DISMISSED** with prejudice as untimely.
7 The clerk of the court shall enter judgment accordingly and close this action.

8 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

9 DATED: October 6, 2015.

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12 JAMES C. MAHAN
13 United States District Judge
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